

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of the Chairperson
Honolulu, Hawaii

November 19, 2009

State of Hawaii
Board of Land and Natural Resources
Honolulu, Hawaii

REQUEST FOR AMENDMENT OF ADMINISTRATIVE SANCTIONS SCHEDULE
FOR THE CIVIL RESOURCE VIOLATIONS SYSTEM

I. ACTION REQUESTED

The Department of Land and Natural Resources (hereinafter the "Department"), Office of the Chairperson, hereby submits a request for approval by the Board of Land and Natural Resources (the "Board") to adopt as proposed the amendment to the Administrative Sanctions Schedule, attached hereto in Exhibit 1, for the purpose of providing guidance to staff when issuing violation notices under the rules of the Civil Resource Violations System (CRVS) of the Department.

II. DISCUSSION

A. Legal Authority

This amendment is proposed pursuant to the Civil Natural Resource Violations Act, Chapter 199D, Hawaii Revised Statutes, and Chapter 13-1, Subchapter 7, Hawaii Administrative Rules, Rules of the Civil Resource Violations System.

On March 13 2009, under Item H-1, the Board approved an initial Administrative Sanctions Schedule for certain Civil Resource Violations of laws administered by the Divisions of Aquatic Resources (DAR) and Boating and Ocean Recreation (DOBOR).

B. Strategy for Implementing the CRVS Rules and Developing the Schedule

The Department recognizes that the CRVS is a valuable and long overdue tool for handling the Department's minor civil violation cases, and as stated in the March 13 submittal to the Board, intends to phase in the CRVS for other violations over the next two years. In this process, pursuant to §13-1-70, HAR, the Department will incrementally propose for adoption by the Board an Administrative Sanctions Schedule and its amendments which will serve as a guideline for imposing penalties and other administrative measures in processing those violations identified in the schedule.

This guideline is only for use by Department personnel in the CRVS, and is not intended and cannot be relied upon to create rights, substantive or procedural, enforceable by any party in any litigation or administrative proceedings with the Department or the State of Hawaii. The Department may act at variance with this guideline by bringing a particular case to the Board for direction and decision making.

C. Proposed Amendment to the Schedule

1. Violations Pertaining to the unpermitted landings of vessels in certain shoreline areas administered by the State Parks Division (§13-146-13, HAR)

§13-146-13, HAR, prohibits the unauthorized landing, operating, leaving behind, beaching, parking, launching, mooring and anchoring of any vessels at State Parks' shoreline areas where appropriate signs are posted.

The purpose of this rule is to protect the natural habitats and geological, cultural and archeological features of certain shoreline areas that the Department deems fragile and prone to damages from human use or contact. This rule can also be used to address safety issues at State Parks' shoreline areas where boating activities may endanger boaters, other park users and their property.

One of these areas is Ka'awaloa – a shoreline commonly used to access the Captain Cook Monument in Kealakekua Bay on the Island of Hawai'i. It is an area particularly rich in historic and cultural assets and designated as a State Historical Park. Boaters often use this shoreline to beach their vessels before snorkeling at Ka'awaloa Cove. A landing prohibition in this area is necessary in order to protect the many historic and cultural sites at Ka'awaloa which are being damaged by foot traffic and to prevent further damages to the shoreline and coral reefs caused by the beaching and launching of vessels.

In January 2009 a comprehensive Kealakekua Stewardship Area Management Plan was completed by the Department. One of the Plan's highest priority management recommendations was to discontinue all motorized and non-motorized vessel landings (including kayaks) and post "no landing without special use permit" signs (as per §13-146-13, HAR) along the Ka'awaloa shoreline. This proposed amendment provides guidance to staff when issuing violation notices under the rules of the Civil Resource Violations System of the Department.

Ka'awaloa is a portion of Kealakekua Bay State Historical Park and this action is being taken in accordance with the Hawaii Administrative Rules of the Department of Land and Natural Resources, Division of State Parks (§13-146-13, HAR). The vessel landing restriction is part of a unified management approach to protecting the historical and cultural integrity of the Kealakekua State Historical Park, as well as the fragile natural resources of the Marine Life Conservation District (MLCD) and surrounding areas. At present there are two companies permitted to provide guided kayak tours to Ka'awaloa from the Napo'opo'o Landing and Ka'awaloa remains accessible by hiking on the designated trails.

Once signs are in place at Ka'awaloa and on the Napo'opo'o Landing, any person beaching or launching a kayak or other vessel along the Ka'awaloa shoreline or mooring at the wharf adjacent to the Cook Monument without a permit from the Department will be held in violation of the State Parks boating rule.

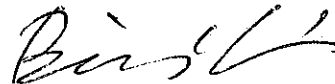
The Department may use the same administrative rule and penalty guideline to address violations at other fragile and culturally significant sites after the initial implementation and evaluation of the strategy at Ka'awaloa.

Violations of the State Parks boating rule are currently considered a petty misdemeanor and would be processed through the criminal courts system. By routing them through the CRVS, the Department hopes for fast, simple, decriminalized administrative processing of these cases, which will benefit the DOCARE and the parties involved in the proceedings. The fine amounts are relatively low and consistent with other civil penalties, statutory provisions, administrative rules and judicial precedents.

III. STAFF RECOMMENDATION

That the Board of Land and Natural Resources approve the amendment of the Administrative Sanctions Schedule as presented under Exhibit 1 for the Civil Resource Violations System of the Department.

Respectfully submitted,



BIN C. LI

Administrative Proceedings Coordinator

APPROVED FOR SUBMITTAL:



LAURA H. THIELEN

Chairperson

Board of Land and Natural Resources

EXHIBIT LIST:

- Exhibit 1: Civil Resource Violations System – Administrative Sanctions Schedule (Amended Part, 11/13/2009)

State of Hawaii
Department of Land and Natural Resources
Civil Resource Violations System

ADMINISTRATIVE SANCTIONS SCHEDULE

Amended November 13, 2009

Board of Land and Natural Resources

The Administrative Sanctions Schedule for the Civil Resource Violations System is amended as follows:

PART 4. DIVISION OF STATE PARKS (SP)

Item 4-1. Violations Pertaining to Unauthorized Landing, Operating, Leaving Unattended, Beaching, Parking, Launching, Mooring and Anchoring of Vessels Where Prohibited by Signage (§13-146-13, HAR; §184-5.5, HRS)

- (a) §184-5.5, HRS, authorizes a maximum fine of \$2,500 for a first violation, \$5,000 for a second violation, and \$10,000 for a third or subsequent violation.
- (b) Every day of such an illegal activity shall constitute a separate violation.
- (c) For a first offense of §13-146-13, HAR, a respondent shall be assessed an administrative fine of up to \$30 if the respondent ceases and desists such an offense immediately and pays the fine within 21 days of the service of the violation notice. The fine shall be up to \$60 if the respondent fails to do so. (Authority: §184-5.5, HRS)
- (d) For a second offense within five years of a first offense, as determined pursuant to §13-1-71, HAR, a respondent shall be assessed an administrative fine of up to \$50 if the respondent ceases and desists such an offense immediately and pays the fine within 21 days of the service of the violation notice. The fine shall be up to \$100 if the respondent fails to do so. (Authority: §184-5.5, HRS)
- (e) For a third or subsequent offense within five years of a second offense, as determined pursuant to §13-1-71, HAR, a respondent shall be assessed an administrative fine of up to \$100 if the respondent ceases and desists such an offense immediately and pays the fine within 21 days of the service of the violation notice. The fine shall be up to \$200 if the respondent fails to do so. (Authority: §184-5.5, HRS)

- (f) Seizure and forfeiture: A proceeding on the seizure or forfeiture of a vessel pursuant to §199-7, HRS, for a violation of §13-146-13, HAR, shall not be affected by the operation of the CRVS.

Appendix 4-A. SP Administrative Sanctions Table

Item No.	Authority	Violation	No. of Offense	Fine (In 21 Days)	Fine (Late)	Other Administrative Sanctions*
4-1	HAR §13-146-13; HRS §184-5.5	Unauthorized landing, Operating, Leaving Unattended, Beaching, Parking, Launching, mooring or anchoring of Vessels Where Prohibited by Signage	First	Up to \$30	Up to \$60	None
			Second	Up to \$50	Up to \$100	None
			Third	Up to \$100	Up to \$200	None

* In addition to any administrative sanctions that may be listed in this column, a regulatory permit or license issued to or held by the respondent may be subject to suspension under Item 1-5 of this Schedule and to revocation under Item 1-6. Any seizure or forfeiture of a vessel pursuant to §199-7, HRS, for a violation of §13-146-13, HAR, shall not be affected by the operation of the CRVS.